

## ्रवसाधारण EXTRAORDINARY

भाग II<del>-- खण्ड</del> 2 PART II--Section 2

### प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

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इस भाग में भिन्न पृष्ठ संख्या वो जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Suparate paging is given to this Part in order that it may be filed as a separate compilation

# RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 16th April, 1987:—

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#### BILL NO. II OF 1987

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

- 1. This Act may be called the Constitution (Amendment) Act, 1987.
- 2. After article 75 of the Constitution, the following article shall be inserted, namely:—

Short title.
Insertion of new article 75A.

"75A. During the period from the date of the dissolution of the House of the People till the date of its reconstitution, the Government shall function as a caretaker Government and such Government shall not—

- (a) initiate and announce new policies;
- (b) promise or start new projects;

Caretaker Government not to announce new policies or promise new projects, etc, (c) grant allowances or loans, increase in salaries of Government servants and employees working in public undertakings; and

(d) hold official functions attended by Ministers, Deputy Ministers and their Parliamentary Secretaries.".

Insertion of new article 164A.

3. After article 164 of the Constitution, the following article shall be inserted, namely:—

Caretaker Government not to announce new policies or promise new prejects, etc.

- "164A. During the period from the date of the dissolution of the Legislative Assembly of a State till the date of its reconstitution, the Government shall function as a caretaker Government and such Government shall not—
  - (a) initiate and announce new policies;
  - (b) promise or start new projects;
  - (c) grant allowances or loans, increase in salaries of State Government servants and employees working in public undertakings of the State; and
  - (d) hold official functions attended by Ministers, Deputy Ministers and the Parliamentary Secretaries of the concerned State.".

It is the common experience that the Government of the day misuses the Government power and machinery in furtherance of the election of the party in power. The ruling party has, under the present circumstances an edge over other contending political parties. The opposition parties are always in a disadvantageous position in this respect. Free and fair elections thus become impossible.

It is, therefore, felt that statutes be amended so as to ensure that every Government (Central or State) functions as a caretaker Government during the period between the dissolution of the House of the People/State Assembly and the Constitution of the new House/Assembly. Announcement of new projects of development, action to expedite implementation of the projects to influence the electorate in favour of the ruling party, promises to set up new projects, laying of foundation stones and sanctioning of new schemes, large scale expenditure of Government money in the constituency, donations to public institutions or individuals, transfer of administrative and police officers, etc. should be held in abeyance during the period.

The Bill seeks to amend the Constitution with a view to achieving the above objective.

Hence this Bill.

CHITTA BASU

### II

#### BILL No. III OF 1987

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

Short title,

Substitution of new article for article 263.

Provisions
with respect to an interState
Council.

- 1. This Act may be called the Constitution (Amendment) Act, 1987.
- 2. For article 263 of the Constitution, the following article shall be substituted, namely:—
  - "263. (1) There shall be established an inter-State Council, charged with the duty of—
    - (a) inquiring into and advising upon disputes which may have arisen between States;
    - (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
    - (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject.

- (2) The Council shall consist of the Prime Minister, the Union Minister of Home Affairs and the Chief Ministers of the States.
  - (3) The Prime Minister shall be the Chairman of the Council.
- (4) The Council may invite any other member of the Union Council of Ministers and an administrator of a Union territory to the Council, whenever considered necessary.
- (5) The Council shall meet at least once in a year and at any time at the request of the Chairman or of a Chief Minister of a State.
- (6) The Council shall have a Secretary who shall be appointed by the President under his hand and seal on the advise of the Prime Minister in consultation with the Chief Ministers of the States.
  - (7) The term of office of the Secretary shall be five years.
- (8) The other terms and conditions of service of the Secretary shall be such, as may be laid down by the Council.
- (9) The Council shall frame an annual budget to which the Central Government and the Governments of States shall contribute equitably.
- (10) The Council shall have the power to lay down its own procedure.".

Article 263 of the Constitution enjoins upon the President to set up an inter-State Council, for the purpose of co-ordination between States if he is satisfied about the need for it. The article is interpreted as one of recommendatory nature and not of mandatory one. Relying on this interpretation the Government have persistently refused to advise the President to set up such an inter-State Council as contemplated in the Constitution. As such, a Council has not yet been set up.

The Administrative Reforms Commission, although did not share the view of changing the Constitution for more harmonious relations between the Centre and States, did recommend the use of this enabling provision to set up a Council. The recommendation, however, did not find favour with the Government presumably because of the interpretation referred to above.

In the changed political condition, particularly marked by the advent of multi-party polity need for a forum for mutual exchange of views on issues which concern the States as well as the Centre, is highly imperative. This Council cannot be brought into existence unless the article is made mandatory.

Hence this Bill.

CHITTA BASU

#### FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for the establishment of an inter-State Council. The Council will have a Secretary and a Secretariat. There will be no expenditure from the Consolidated Fund of India in the case of the Members of the inter-State Council in as much as all of them will already be the functionaries of the Central or State Governments or of the Administrations of the Union territories, drawing their salaries and allowances from the respective Governments and the Union territories.

There will, however, be expenditure involved from the Consolidated Fund of India in respect of the office of the Secretary and his Secretariat. The recurring expenditure on this account may, approximately, be of the order of rupees three lakhs per annum. There will also be involved a non-recurring expenditure of about rupees fifty thousand at the initial stage.

### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the proposed Bill provides for laying down by the Council the terms and conditions of the service of the Secretary to the inter-State Council sought to be established therein. Provision has also been sought to be made empowering the Council to lay down its own procedure. The matters with respect to which the Council will make rules are matters of details only. The delegation of legislative power, therefore, is of a normal character.

## III

### BILL No. IV QF 1987

A Bill further to amend the Representation of the People Act, 1951

BE it enacted by Parliament in the Thirty-Eighth Year of the Republic of India as follows:—

I. This Act may be called the Representation of the People (Amendment) Act, 1987.

Short title.

43 of 1951.

2. In Section 77 of the Representation of the People Act, 1951 (hereinafter referred to as the principal Act) in sub-section (1),—

Amendnent of Section 77.

- (i) For Explanation, 1, the following Explanation shall be substituted, namely:—
- "Explanation 1—Any expenditure incurred or authorised in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall be deemed to be expenditure in connection with the election incurred or authorised by the candidate or by his election agent for the purposes of this sub-section.";

(ii) Explanation 3, shall be omitted.

Insertion of new section 100A,

3. After section 100 of the principal Act, the following section shall be inserted, namely:—

Misuse of Government power or machinery to render election invalid.

"100A. Misuse of Government power of Government machinery in relation to a constituency or misuse of Government power or Government machinery likely to affect the result of election in a constituency shall render the election invalid in that constituency.".

Insertion of new section 124.

- 4. After section 123 of the principal Act, the following section shall be inserted, namely:—
  - "124. (1) Misuse of Government power or Government machinery in furtherance of the election of the party in power shall be deemed to be a corrupt practice for the purposes of this Act.
  - (2) The following acts shall be deemed to be a misuse of Government power or Government machinery in furtherance of the election of the party in power, in case such acts are done during the period from the date of dissolution of the House of the People or the legislative Assembly of a State, as the case may be, till the date of its reconstitution:—
    - (i) starting of a new project of development or action to expedite implementation or laying of foundation stone of a new project or sanctioning new schemes or projects;
    - (ii) promises by the Government to set up new projects of development;
    - (iii) large scale expenditure of Government money in a constituency;
    - (iv) grants to public institutions of individuals, associations or bodies of persons;
    - (v) transfer of police officers above the level of head constable, and administrative or revenue officers of class I or class II;
      - (vi) grant of allowances or loans or salary increase;
    - (vii) use of jeeps and other vehicles belonging to Government and local bodies for election work of the party in power or any of its candidates;
    - (viii) publishing of advertisement of the Government or the party in power at Government expenses;
    - (ix) exhibition of newsreels at Government expenses for the propaganda for the Government or the party in power.

- (x) giving time to a Member of the Government either on radio or television except such time as may be allotted to his party for election propaganda;
- (xi) use of Government postage for election work of the party in power;
- (xii) use of the services of the public works department for erecting rostrums for public meetings;
- (xiii) travel by Ministers, Deputy Ministers and their Parliamentary Secretaries at Government expenses;
- (xiv) use of Government aircraft by the Ministers, Deputy Ministers and their Parliamentary Secretaries or a Member of the party in power for election purposes;
- (xv) holding official functions attended by Ministers, Deputy Ministers and their Parliamentary Secretaries.".
- 5. In section 169 of the principal Act,-

Amendment of section 169

- (i) in clause (3), the words "so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule" shall be omitted; and
- (ii) after clause (3), the following clause shall be inserted, namely:—
  - "(4) No rule made under this Act shall come into force before the expiry of the session, of each House of Parliament, immediately following the Session in which the rule has been laid under clause (3).".

It is generally admitted that there exist certain loopholes in the present electoral laws and processes. Many Committees have made various suggestions for the improvement and reforms in the electoral system.

The present Bill proposes to codify some of the suggestions of these Committees and others in order to plug the loopholes and ensure free and fair elections to the extent possible, in the present circumstances.

Hence this Bill.

CHITTA BASU.

### IV

#### BILL NO. XIII OF 1987

A Bill to provide for the protection of the national honour and integrity.

Bz it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the National Honour and Integrity (Protection) Act, 1987.

Short title and extent.

- (2) It shall extend to the whole of India.
- 2. Whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or otherwise brings into contempt, whether by words spoken or written or by any other act, the Indian National Flag or the Constitution, or any part thereof, shall be punished with forfeiture of franchise for a period of six years and shall also be liable to imprisonment for a term which may extend to three years or with fine or with both.

Insult to
Indian
National
Flag and
Constitution.

Explanation 1.—Comments expressing disapprobation or criticism of the Indian National Flag or the Constitution or of any measures of the Government, with a view to obtaining an alteration of the Indian National Flag or an amendment of the Constitution, by lawful means do not constitute an offence under this section.

Explanation 2.—The expression "Indian National Flag" includes any picture, painting, drawing or photograph or other visible representation of the Indian National Flag or any part or parts thereof, made of any substance or represented on any substance.

Explanation 3.—The expression "Constitution" includes any version or translation thereof.

Explanation 4.—The expression "public place" means any place intended for use by, or accessible to, the public and includes any public conveyance.

Preventing the singing of the National Anthem.

3. Whoever intentionally prevents the singing of the National Anthem or causes disturbance to any assembly engaged in such singing or shows any disrespect to the National Anthem shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Explanation.—Whoever leaves an assembly with a view to avoiding such singing or being in the assembly intentionally refrains from such singing shall be deemed to have shown disrespect to the National Anthem.

Disrespect to National Functions. 4. Whoever publicises his intention to boycott or instigates others to boycott a National Function or does any act which is indicative of non-co-operation with the National Function shall be punished with ferfeiture of franchise for a period of six years and shall also be liable to imprisonment for a term which may extend to three years or with fine or with both.

Explanation 1.—The expression "National Function" means any function organised by the Central Government or any State Government or any local authority to mark the Independence of India or the commencement of the Constitution.

Explanation 2.—Wearing of a black badge or the like, on the occasion or day of a National Function, shall be deemed to be an act indicative of non-cooperation with the National Function.

Disintegrating activities,

#### 5. (1) Whoever,---

- (a) by words spoken or written demands the separation of any territory of India;
- (b) publicly demands the creation of a State or alteration of the boundaries of any State, on the basis of race, religion, caste and if such demand is likely to disturb the public order or harmony among the people.

shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) If the demands referred to in sub-section (1) are supported or accompanied by violence resulting in harm to persons or their property, the persons making or supporting the demand thereafter, or in the course thereof, shall be punishable with imprisonment for a term which

shall be not less than one year but which may extend to seven years and shall also be liable to fine.

Explanation.—When violence is resorted to by any person belonging to the group for whose benefit the demand is made, the demand shall be deemed to be supported or accompanied by violence.

6. Any person abetting the commission of any offence under this Act shall be punished with imprisonment to the same extent as provided for that the offence in this Act, whether such an offence has actually been committed or not, in pursuance of such abetment.

Abetment.

7. When a person having been convicted for an offence under this Act commits the same offence again or commits any other offence under this Act he shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

Repetition of offence.

8. (1) Any person who has been convicted and sentenced to imprisomment for a term of six months or more for an offence under this Act, shall,—

Deprivation of citizenship,

- (a) if he is a citizen of India, cease to be such a citizen for such period as may be prescribed;
- (b) if he is a citizen of any other country be repatriated to that country after he has served his sentence.
- (2) Any person ceasing to be a citizen of India under clause (a) of sub-section (1) shall simultaneously cease to hold all such offices and assignments, if any, which can be held only by a citizen of India.
- (3) The Central Government may, for reasons to be recorded in writing, restore the citizenship to the person deprived thereof under clause (a) of sub-section (1) but only after a period of five years from the date of cessation of citizenship.
- 9. The penalties provided for in this Act shall be in addition to any other penalty to which the offender may be liable under any other law for the time being in force.

Penalty under this Act to be in addition. Power to make rules.

10. The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act and shall

> Repeal and Saving.

cause them to be laid before each House of Parliament.

11. (1) The Prevention of the Insults to National Honour Act, 1971

(2) Notwithstanding such repeal, any offence committed under the Act hereby repealed shall be deemed to have been investigated prosecuted and punished in so far as it is not inconsistent with the provisions of this Act, under the corresponding provisions of this Act.

69 of 1971.

is hereby repealed.

In the recent past a lot of disrespect has been shown by a number of people to our national honour, which is a very precious treasure of our country, by insulting the National Anthem and the National Flag on a number of occasions. Recently, in the State of Kerala some school children refused to sing National Anthem and the action taken by the State authorities was challenged in the Supreme Court of India and the judgement in the case has been very unfortunate. Feelings of patriotism must be ever present in the body and soul of every citizen but it is very unfortunate that some separatist and extremist elements have gone to the extent of burning copies of the Constitution and the National Flag. Some others had given the call of boycott of national functions.

The national honour has to be safeguarded at all costs. As such, it has become necessary that stringent punishment should be awarded to those who show disrespect to the National Flag or to the National Anthem, to save our great country and her proud heritage.

Hence, this Bill.

SHEO KUMAR MISHRA

#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill provides that the Central Government may make rules for carrying out the purposes of this Act. The rules to be framed are matters of procedure or detail. The delegation of legislative power is, therefore, of a normal character.

## V

#### BILL No. XIV of 1987

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1987.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. After article 30 of the Constitution, the following article shall be inserted, namely:—

"30A. The State shall provide free and compulsory education for all children upto senior secondary stage."

3. Article 45 of the Constitution shall be omitted.

Short title and commencement.

Insertion of new

article
30A.

Omission of article

45.

Article 45 of the Constitution enjoins on the State to provide for free and compulsory education for all children until they complete the age of fourteen. As, however, this is only a Directive Principle of State Policy, it is not enforceable by law. Also not much has been done in this regard and as a matter of fact illiteracy in the country has increased since independence. It is high time that the provision to provide for free and compulsory education is included in the Fundamental Rights so that it can be enforced by law. It is also desirable at this stage that the State is called upon to provide for free and compulsory education upto the senior secondary level so that the children belonging to the economically weaker sections of the society are benefited thereby.

Hence, this Bill.

SATYA PRAKASH MALAVIYA

### FINANCIAL MEMORANDUM

Clause 2 of the Bill provides that the Central Government shall provide for free and compulsory education to all children upto senior secondary stage. The Central Government shall have to assist financially the State Governments to achieve the said objective.

It is estimated that in this connection the recurring annual expenditure will be about rupees two hundred crores and non-recurring expenditure will be about rupees twenty crores.

SUDARSHAN AGARWAL, Secretary-General.